Energy Choice Matters

May 23, 2008

PUCT Staff to Examine Fixed-Price Rules

The PUCT staff is to open a rulemaking to examine potential changes to P.U.C. SUBST. R. 25.475, relating to information disclosures to mass market customers and terms of service, to ensure "fixed" price contracts offered by REPs are truly fixed for a set term.

The action comes after National Power of Houston informed customers it intended to raise prices on fixed price contracts, citing a material change clause, though the REP later rescinded its proposal (Matters, 5/16/08).

Staff will also examine whether any other substantive rules will need to be tweaked to address the fixed price issue, and expects to offer a proposal for publication in July.

Staff also gave supplemental guidance to REPs on what offers should be called fixed or variable when listed on the Power to Choose website, and directed REPs to change their labeling as needed. Staff is worried that REPs are benefiting from being listed on the site but are posting misleading offers. Staff reported that if REPs can change a "fixed" price contract due to market conditions, that product cannot be called fixed.

Starting next week, the staff will review offers and remove those not conforming to the staff's guidance. Removal may prompt staff to fully vet a REP's terms of service before permitting their offers back on Power to Choose.

Chairman Barry Smitherman found it "disturbing" that some terms of service would characterize offers as a fixed price, with bold letters promising "price guarantee," "price protection," or "price certainty," but would bury on the third page that the REP could change the price based on changing economic conditions.

Customers expect REPs' fixed price offers to be similar to fixed rate mortgages or credit cards,

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BGE Files Mitigated Rates for New Type II Customers, Delivery Surcharge

All Baltimore Gas & Electric non-residential customers would pay a delivery surcharge of $0.00137/kWh under Rider 29 to pay for mitigation of generation rates for new Type II customers, under revised rates filed yesterday (Matters, 5/22/08). The PSC is to consider the new rates at its May 28 meeting.

In response to a PSC order directing that new Type II customers should have their rate increase capped at 15% for the June - August quarter, as they transition from a blended price laddered over two years to quarterly pricing, BGE adjusted the Type II generation market-priced service rate for those new Type II customers in Class G from 15.306¢/kWh to 12.805¢/kWh.

Mitigated generation market-priced service rates for new Type II customers in Class GS would be:

Period	Original June 1 Rate (¢/kWh)	Mitigated Rate (¢/kWh)
Peak	21.152	16.566
Intermediate-Peak	14.557	11.399
Off-Peak	11.536	9.032

In a press release yesterday, the PSC reiterated that it believed rate mitigation was in the "public interest" due to the one-time transition and higher Type II rates.

New Type II customers would have experienced rate increases of approximately 26% to 41% without Commission action, the PSC noted. Had those customers remained on Type I service, their rate increase would have ranged from 3% to 13%, the PSC said.

Surges and Circuits

Short Circuits

Rate Mitigation for New Type II Customers: While any plan adopted by the Maryland PSC to blunt the move of certain customers to Type II rates would be imperfect given the short timeframe involved, the cross-subsidization approach seems particularly unfair to most non-residential customers. Every other rate class which has faced similar transitions has either not been offered mitigation, or has had to pay for mitigation itself through deferral plans that included interest. It's not clear why it's in the public interest for 15,000 new Type II customers to enjoy a subsidized approach.

We presume that an opt-in deferral plan, which we would consider a better approach, could not have been implemented in the short time between the RFP results in late April and the June 1 start, but we wonder whether an opt-out plan, or a mandated deferral, would have been preferable to cross-subsidization

We don't like the idea of new Type II customers being forced to pay carrying costs of a deferral plan because they either were not informed timely enough to opt-out, or deferral was mandatory, but we think those customers paying interest charges, even if they were willing to pay the higher rates now, is more equitable than having other customer classes pay for mitigation they won't enjoy.

The best scenario probably would have been to delay the move to the next quarter when prices may be lower. But that change would have required changes to the SOS RFP, and at the time it was first sent out to prospective bidders, energy prices, while higher, were probably not at the level where it was clear that new Type II customers would be seeing such large increases.

Still, we wonder, given the year and half since the PSC first ordered the change in Type I customer definition, whether the PSC should have been more active in monitoring the market and preparing for a worst case scenario - especially given recent history of rate transitions at the Commission. We'd be interested in hearing the Commission's thoughts of other alternatives it may have considered for mitigation , and why the subsidization approach was considered to be in the "public interest" ahead of any other options.

Finally, while the PSC had to act quickly, the lack of transparency regarding when it realized mitigation would be necessary, how it came up with its proposal, and notice to stakeholders leaves much to be desired. Stakeholders being asked to subsidize other rate classes deserve more justification than just a declaration that the PSC found its proposal to be in the public interest.

ERCOT: Nodal delay may not have been a shock, but the ISO had previously been very confident publicly about its ability to meet its Dec. 1 go-live date.

TXU Raises Concern over CenterPoint AMIN Plan

Because "significant questions" remain regarding CenterPoint Energy's proposed Advanced Meter Information Network (AMIN) plan (35620), TXU Energy urged the PUCT not to waive or extend the filing date to request interim relief and does not agree to interim approval of CenterPoint's proposed tariff.

The AMIN plan would allow REPs to direct and fund the additional deployment of smart meters outside of CenterPoint's Advanced Meter System Deployment plan (Matters, 5/19/08, 5/2/08).

Questions remain, TXU reported, regarding whether the AMIN plan could give one REP an unfair advantage which could hurt competition and ultimately hurt consumers. TXU also cited outstanding questions regarding whether the AMIN plan would serve as a barrier to switching or a barrier to entry into the market.

TXU wants to explore whether the AMIN program threatens to delay deployment of CenterPoint's Advanced Metering System, and is concerned AMIN could distract focus and resources from that effort.

TXU asked what features the AMIN plan will provide to the market when compared with the Advanced Meter System Deployment plan, what benefit would come to customers and the market under the AMIN plan, what would be the cost to participate, and what would be the true-up methodology.

N.Y. ESCOs Urge More Timely Utility Price Disclosures

Rigidly dictating the format of ESCO terms and conditions in New York will confine ESCOs to "a cookie cutter approach" to the types of products and services offered, depriving customers from the benefits of innovation, the National Energy Marketers Association told the PSC in reply comments regarding adding marketing standards to the Uniform Business Practices (07-M-1514 et. al.).

NEM was responding to suggestions for a "Schumer box" or other label summarizing key terms of contracts (Matters, 4/21/08).

NEM opposed a suggestion by the Consolidated Edison utilities that would allow customers to return to bundled service by contacting their utility. ConEd had proposed the rule because it claimed some ESCOs were delaying customers' request to return to utility service (Matters, 4/18/08).

But by removing the mandate that customers contact their ESCO, ESCOs may not have an opportunity to remind customers to consider the contractual consequences of termination, NEM noted. "The proposal would also appear to provide the utilities (direct ESCO competitors) with the ability to terminate a contract that exists between two other parties - the marketer and the choice consumer," NEM added.

NEM argued that current utility rates hinder comparison shopping for several reasons, and need to be more transparent to make potential new ESCO disclosures meaningful.

NEM urged utility rates to be fully unbundled on an embedded cost basis; disclose whether and how utility hedging is reflected; disclose how frequently the utility rate is subject to change; disclose that the utility rate is subject to adjustment for true-ups; and disclose what current rate adjustments are in effect.

"ESCOs find it increasingly difficult to develop product offerings that are competitive with the utility inasmuch as ESCOs need to submit their prices to their marketplace before utilities even submit their monthly expected cost of commodity," NEM reported.

Such timing inhibits consumers from making informed choices and also creates a competitive disadvantage for ESCOs, NEM argued.

The New York State Energy Marketers Coalition expressed a similar concern.

NYSEMC also suggested longer rescission periods as a compromise over proposals to waive termination fees up to 30 days after a customer's first bill. The current rescission period is three business days.

NYSEMC's proposal would offer a different length rescission period based on the marketing method.

For telephonic, direct mail return card or web-based agreements with customers, NYSEMC proposed that ESCOs be permitted to enroll customers with the utility on the date of the sale, with the customer given seven days from the postmark of the utility confirmation letter regarding the switch to cancel enrollment without penalty.

For door-to-door sales or other in-person sales made outside of the ESCO's place of business, NYSEMC suggested that ESCOs be made to wait three days from signing an agreement before sending enrollment to the utility. Once the enrollment is sent to the utility, the customer would have seven days from the postmark of the utility confirmation letter regarding the switch to cancel enrollment without penalty. Thus, the rescission period for such in-person sales would be 10 days.

Responding to suggestions from the Attorney General regarding the provision of contractor training materials to the PSC, NEM noted it wasn't clear if the AG was referencing brokers, and NEM suggested that the Commission may wish to distinguish and separately consider issues that are associated with broker behavior.

Oncor Intends to File Smart Meter Deployment Plan By June 1

Oncor shared details of a proposal to install more than 3 million advanced meters throughout its system by 2012, and intends to file a deployment plan with the PUCT by June 1.

Oncor CEO Bob Shapard called the meters, "essentially an electricity speedometer that puts control in the hands of consumers."

The utility is proposing a surcharge which would be collected over an 11-year period to pay for the meters. Residential customers would pay about $2.35 per month under the fee to pay for meters, communications and support systems, low-income assistance and customer education programs.

Oncor is to request permission to facilitate the distribution of free in-home monitors to all state-qualified low-income consumers.

Briefly:

Parsley Questions Uplifting Cost of Cooperative Grid Project

Commissioner Julie Parsley raised a concern that a proposed Brazos Electric Power Cooperative 138-kV line Collin County appears to be a transmission solution to fix a cooperative's distribution system (34276). Parsley is not sure that a $12 million uplift should be paid by the market to fix the distribution system in a footprint not open to competition, and that perhaps the problem is better paid for by distribution customers. The Commission directed parties to address its questions in supplemental filings.

Ohio Consumers' Counsel Wants Change to Duke-Ohio Corporate Separation Plan

The Ohio Consumers' Counsel yesterday urged PUCO to amend Duke Energy Ohio's corporate separation plan to expressly state the requirement that Duke cannot sell or transfer its ownership of generating plants unless Duke-Ohio obtains PUCO approval of the transaction (08-0613-EL). The separation plan should be updated to reflect the passage of SB 221, which requires EDCs to obtain PUCO approval before divesting generation, OCC argued. Duke-Ohio's application at FERC to transfer its plants into new, separate LLCs -- a proposal opposed by PUCO, the OCC and industrials (Matters, 5/15/08) -- demonstrates that action to modify Duke's corporate separation plan is reasonable, OCC said. Duke has stated it won't transfer the plants without PUCO approval, but OCC is worried the FERC filing could cause debate and litigation regarding the right of Duke to transfer ownership of generating plants to other entities after 2008.

PUCT Acts on TSP Selection; 15-Minute Settlement Study

The PUCT approved staff's scope of work for a study on 15-minute settlement from advanced meters (34610, Matters, 5/19/08) and also accepted Commissioner Paul Hudson's language to tweak financial qualifications of Transmission Service Providers to access Competitive Renewable Energy Zones (Matters, 5/22/08). The PUCT will automatically qualify current CCN holders and also provide that entities may present "evidence satisfactory to the commission" to qualify, to permit new entrants to use unique financial arrangements that might not be considered by more prescriptive language.

Suez Buys Stake in Astoria Plant

Suez Energy North America has acquired a 30.45% equity interest in the 575 MW Astoria Energy Power Plant from SCS Energy. "New York City is a high-value market with high barriers to entry for new generation," noted SENA CEO Zin Smati. Smati called the interest acquisition an "important step" in SENA's expansion of its U.S. power generation portfolio, which focuses on ISO New England, New York ISO, PJM and ERCOT as core markets.

DPUC OKs UI Procurement

The Connecticut DPUC approved the May 21 default service procurement of United Illuminating. The RFP was to satisfy 20% of Standard Service needs for January through June 2009, 20% for July through December 2009, 20% for the year 2010, and 10% for the year 2011. UI also procured 100% of Last Resort Service needs for July through September of this year (06-01-08PH02).

Penn Power POLR Rates Approved

Average residential default service rates at Penn Power are to increase 2% June 1 under a procurement approved by the Pennsylvania PUC. The average price of the winning bids was $80.48/MWh, with Constellation Energy Commodities Group, FirstEnergy Solutions and Sempra Energy Trading winning load. The monthly bill for an average residential customer using 750 kWh a month will increase from $111.62 to $114.21. The typical residential heating customer will save about 10%, though, with their bill falling from $186.26 to $167.97.

Pa. PUC Approves More Attractive Payments for DG

Pennsylvania utilities are to pay the full retail rate (fully bundled charges for generation, transmission, and distribution) when crediting customer generation during a month or carrying the charges onto the next month's bill, the Pennsylvania PUC ruled yesterday (L-00050174). At the end of the year, any excess generation produced by the customer shall be paid the price to compare rate, determined by weighted averages of applicable retail generation and transmission rates. Previously, distributed generation was paid the less attractive avoided cost wholesale rate. Commissioner Kim Pizzingrilli dissented, arguing the price to compare methodology was not consistent with the plain language of the relevant statute.

PECO Customer Education Plan Gets Interim Nod

The Pennsylvania PUC gave tentative approval to PECO's customer education plan regarding the expiration of rate caps in 2011, providing a 30-day period for parties to file comments or request a hearing on the plan. The five-year $6.6 million plan would initially stress the expiration of rate caps, while focusing on mitigation options for customers (such as choosing a competitive supplier and energy efficiency measures) as Jan 1., 2011 nears.

FERC Approves ISO-NE ICR

FERC accepted ISO New England's Installed Capacity Requirements for the 2008/2009 capability year, again asserting its jurisdiction over the ICR because it is a component of jurisdictional wholesale rates. The Connecticut DPUC has consistently opposed FERC's jurisdiction over what the DPUC considers a generation matter (ER08-696).

Gabbard Join PPL Marketer

PPL EnergyPlus named Robert Gabbard senior vice president for trading. Gabbard had been with Conectiv since 1998, most recently as senior vice president of merchant trading operations.

NYISO Forecasts Summer Peak

The New York ISO forecast summer peak usage to reach 33,809 MW, 5.1% higher than last year's peak but lower than the record of 33,939 MW set in 2006. NYISO expects capacity of 38,920 MW to be available, with New York City in-city capacity 480 MW above the requirement of 9,571 MW and Long Island capacity 530 MW above the requirement of 5,098 MW.

Texas Fixed Rates ... *from 1*

Smitherman noted. Smitherman considers himself fairly sophisticated, but doesn't know what terms like "non-firm fixed," "partially fixed" or "variable fixed" mean.

Commissioner Julie Parsley suggested that contracts which are marketed as fixed but allow REPs to change the price may well be deceptive.

Parsley also drew attention to variable contracts which unilaterally give the REP the option to change the rate without explanation.

The Commission's guidance, Parsley noted, contemplates that REPs clearly define and explain for what reasons variable rates may change, and how much they can change. Variable contracts citing only "changing market conditions" are vague, and it's uncertain whether such terms would support the changing of a variable rate.

Parsley does not want to see "teaser" rates in the low 9¢/kWh range that jump to 17¢ after the first bill (or potentially before the low rate is even charged) without a legitimate basis for the fluctuation, such as changing wholesale electricity prices, natural gas or other fuel prices, or ancillary services costs.

The substantive rules' provision that REPs may make material changes in contracts upon 45 days notice does not confer any new right upon REPs, Parsley stressed, and can only be applied if REPs, in their contracts, inform customers that the REP may make a material change under such conditions. P.U.C. SUBST. R. 25.475(e)(1) does not and cannot confer rights on a REP that its contract does not otherwise provide, Parsley noted.

Smitherman also suggested that variable rate products should be month-to-month in nature, and cannot carry a longer commitment that would prevent a customer from leaving when receiving a new variable rate.

Commissioner Paul Hudson urged caution on drawing too rigid rules regarding product labeling given an impending proliferation of offers from advanced meters. He suggested an interactive dialogue among customers and

REPs that could establish dynamic guidance that could respond to new offers as they arise.

Smitherman agreed on the need to balance creativity of REP community against what consumer experience has been with other products.

A TXU representative cautioned the Commission that its current guidance on fixed versus variable products would force a REP to classify a product that offers a fixed price for a set period of time (such as a year), but also is a month-to-month contract that does not lock the customer into a commitment, would have to be labeled as a variable product, because the term of the contract is only one month, even though the fixed price is guaranteed for a longer period of time. Although Commissioners noted that's the case with TXU's legacy price to beat product, which isn't open to new customers, TXU noted that if it or another REP wanted to offer the same type of product to new customers, it would still have to label it as variable.

Don’t Miss Us Memorial Day

Energy Choice Matters will publish an issue on Memorial Day, May 26. Be sure to check your inbox if you’re returning from being out of the office.